

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5334 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

AVCHAR SAVSHI VAGHRI(SOLANKI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR BG JANI for Respondent No. 1

MISS.SIDDHI TALATI, AGP. for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India, the detention order dated 6.5.1998 passed by the Commissioner of Police, Rajkot under section 3(2) of the prevention of Antisocial Activities Act, 1985 (for short PASA Act) is under challenge with further prayer that the petitioner be released from

illegal detention.

The Detaining Authority, the Commissioner of Police, Rajkot upon consideration of 2 cases registered against the petitioner under Prohibition Act, statement of three witnesses who requested not to disclose their identity passed the impugned order with a view to prevent the antisocial bootlegging activity of the petitioner which was prejudicial for maintenance of public order.

This order has been challenged only on one ground that the representation of the petitioner was not considered by the State Government. The petitioner sent a representation dated 9.7.1998 through his Advocate to the Home Minister of the State of Gujarat. This plea was incorporated in the writ petition vide amendment permitted on 5.11.1998 but no counter affidavit has been filed. Learned Assistant Government Pleader on the basis of the original record with the officials pointed out that the said representation was returned to the Advocate of the detenu, vide letter dated 22.7.1997, because it was not bearing thumb impression or signature of the detenu, with a request that the signature or thumb impression of the detenu should be obtained and sent back for consideration. The stand of the State Government insisting the detenu to furnish his signature and thumb impression on representation was uncalled for. When the representation was sent by the Advocate under instructions from the detenu no further compliance was required and it should have been presumed that the representation was made by the Advocate under instructions from the detenu. The State Government was duty bound to consider it on merits and should not have delayed its disposal on untenable ground by returning the same to the Advocate of the petitioner for obtaining signature of the detenu. Such attitude of the concerned Government was not approved by the Apex Court in Balchand Chorasias Vs. Union of India, AIR 1978 SC Pg.297. Non consideration of representation by the State Government since 15.5.1998 is a cogent ground for quashing the impugned order.

No other point was pressed.

For the reasons stated above the petition succeeds and is hereby allowed. The impugned order of detention dated 6.5.1998 is hereby quashed. The petitioner shall be released from custody forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt